

XV. Section 75 (c), Trees, the property of Government but not growing in Reserved or Protected Forests.

B. RULES RELATING TO SECTIONS 40 TO 44 OF LAND REVENUE CODE—concluded.

(2) Teak trees growing in any such land shall be available for cuttings to be made from time to time by or under the orders of the Forest Department in consultation with the Collector, and the sale of any teak tree growing in any such land or of the timber thereof will confer no right to the aftergrowth from the root or stump of the tree so cut, but the reservation of the rights of Government over the teak trees will extend to their after-growth also.

C. Government Resolutions regarding trees in Occupied and Waste Numbers and in Government Compounds.

Quoting Government Resolution discussing and giving orders on special cases of rights to trees in different districts.

X 355. For the Government Resolutions discussing special cases of rights to trees in various districts and giving orders on the same, read the following:—

District.	Subject.	Government Resolution.
Thána ...	Copies of a letter from Government and the reply of the Remembrancer of Legal Affairs thereto, forwarded to the Commissioner, Northern Division, the Conservator, Northern Circle, and Collector of Thána, for information and guidance.	No. 7800, dated 1st October 1884.
" ...	Reshoots of reserved trees in varkas lands belonging to Government.	No. 7915, dated 27th October 1893.
" ...	Disposal of after-growth and trees in occupied numbers to be disposed of at once.	No. 7114, dated 27th September 1897.
" ...	Regarding limit of time allowed to contractors when cutting royalty trees in Thána.	No. 460, dated 20th January 1898.
Thána and Kolába ...	The right to teak, tiwas, blackwood and sandalwood, in all occupied lands vests to Government in the talukas coming under the Sanjan and Kolwan Settlement, and waiving its rights in certain lands, in both districts.	No. 10087, dated 23rd December 1892, and No. 7276, dated 15th November 1898.
Kolába ...	Special rules for reservation of trees below the Gháts.	No. 3462, dated 5th June 1883.
" ...	Regarding the disposal of trees in occupied lands.	No. 3906, dated 22nd May 1883, No. 4126, dated 21st May 1885, and No. 3998, dated 4th June 1886.
" ...	Upholding Rule 98-A and Rule 2 under section 75, Indian Forest Act, as published in Notification No. 343, dated 15th January 1883.	No. 9241, dated 6th December 1889.
" ...	Proposals to introduce the orders given in Government Resolution No. 7114, dated 27th September 1897, for Thána into the Kolába District.	No. 2112, dated 24th March 1898.

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C. GOVERNMENT RESOLUTIONS REGARDING TREES IN OCCUPIED AND WASTE NUMBERS AND IN GOVERNMENT COMPOUNDS—continued.

District.	Subject.	Government Resolution.
Kánara ...	Reservation of teak, blackwood and sandalwood in certain lands in the Kánara District.	No. 1518, dated 18th February 1884.
Ratnágiri ...	Rules regulating lopping of reserved trees in the varkas and cultivated lands of Ratnágiri.	No. 5388, dated 2nd August 1890.
Ahmednagar ...	Rules for the working of Rule 98 of the Land Revenue Code in the Akola and Sangamner Tálukas.	No. 242, dated 11th January 1889.
Panch Maháls ...	Reserved trees in the Panch Maháls	No. 3203, dated 21st June 1880, and No. 1542, dated 16th March 1881.
" ...	Protection of trees in waste lands	No. 1542, dated 16th March 1881.
" ...	Modification of above Government Resolutions.	No. 7256, dated 8th September 1885, and No. 649, dated 30th June 1882.

356. In exercise of the powers conferred by section 75 of the Forest Act, 1878, the Governor in Council is pleased to make the following subsidiary rule which shall be substituted for Rule 2, made under that section and published at page 847 of the *Bombay Government Gazette* of 23rd October 1879, Part I:—"No person shall cut, lop, or any way injure, appropriate or remove any tree or any loppings thereof, which is the property of Government grown or growing on lands belonging to or in the occupation of private persons; or knowingly and wilfully permit or abet the cutting, lopping, injuring, appropriating or removing of the same by any other person, without having first obtained the permission of the Collector, or in the case of teak, blackwood, or sandalwood trees, of the Conservator of Forests."*

357. As the demarcation and settlement of forest is now well advanced it is expedient, as a general rule, that the sale of the reserved trees to the occupants should follow on the completion of the settlement. The mode of disposing of the trees which would be most profitable and favourable to Government would be to sell them by public auction, and even if an outsider bought a tree growing on another person's land, he would have to clear it away within a stated time, and the owner of the

* Notification No. 343, dated 15th January 1883, *Bombay Government Gazette*, 1883, Part I, page 59.

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land would be the owner of the roots and stool from which poles would spring or shoot. But as the desire of Government is to give the trees at a moderate upset price, the Forest Department should sell the trees at an all round price of Re. 1 per tree, which would be a very fair and by no means prohibitive price, considering that the trees would fetch very much more if sold by auction.

358. Government trees in numbers which have been registered for future inclusion in forests should not be disposed of, and the Collector has full discretion not to grant the right of occupation of numbers which contain valuable trees.

359. It should, however, be brought to the notice of the Forest Department that, in lands of which the Survey Settlement was completed after the 21st January 1865, the date on which Bombay Act I of 1865 became law, the right of Government to teak, blackwood and sandalwood trees must be held to have been conceded wherever joint Rule 10 was in force, unless it can be shown that such right was reserved by Government or by a Survey Officer—

- (a) by express order made at or about the time of settlement,
- (b) under rule or general order in force at the time of the settlement,
- (c) by notification made or published at, or any time after, such settlement.

If occupants in land settled before 1865 now claim concessions, these claims will have to be considered on their merits, and should be sent up to Government for decision.

Disposal of claims made for trees before the passing of the Act in 1865.

Every effort should be made to dispose of, as speedily as possible, Government trees standing in occupied numbers.*

360. Sandalwood trees standing in occupied numbers should be cut and sold departmentally instead of being given to the occupants at a uniform price of one rupee. The Conservator is at liberty to exercise his discretion in deciding whether to cut and remove the trees through departmental agency or to sell the trees as they stand by public auction, requiring the purchasers to cut and remove them within a reasonable period.

Disposal of sandalwood trees in occupied numbers.

* Government Resolutions No. 3906, dated 22nd May 1883; No. 4537, dated 15th June 1883; No. 7537, dated 25th October 1890; and No. 6852, dated 6th October 1891.

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C. GOVERNMENT RESOLUTIONS REGARDING TREES IN OCCUPIED AND WASTE NUMBERS AND IN GOVERNMENT COMPOUNDS—continued.

361. When the occupant declines to purchase all the reserved trees, other than sandalwood, on his land at an all round rate of one rupee per tree, the trees should be sold by auction. He cannot be permitted to select some at the all round rate and to refuse to buy the remainder.

Procedure to be followed in the case of reserved trees, other than sandalwood, when the occupant refuses to buy.

These orders apply only to lands occupied for agricultural purposes, and not to the compounds of bungalows, the owners of which may grow what trees they choose without any claim on behalf of Government.*

The above rules apply to agricultural lands only.

362. Sandalwood trees standing in building sites held rent-free under the provisions of section 128 of the Land Revenue Code, would be at the disposal of the holders of such lands, because those sites fall under the definition of "alienated" lands, given in clause 19 of section 3 of the Land Revenue Code, and, therefore, the reservation of sandalwood provided for by section 40 of the Code does not apply to them. Sandalwood standing in lands not held rent-free within the limits of the City of Dhárwār would be the property of Government under section 40 of the Land Revenue Code.†

Ownership to sandalwood trees growing on building sites held rent-free.

363. The interpretation to be placed on Rule 98 of the rules under the Land Revenue Code (read section 365, Standing Order, Forests) is that Government abandon their claim to any tree growth after the sale of the occupancy right, i. e., to trees or saplings which have grown up either for the first time or from the stools or old roots after the occupant has obtained the land. Where teak has been cut by Government on waste lands which are still unoccupied, any new growth which may arise either from the old stools or stumps or entirely separate from those roots or stumps prior to the sale of the occupancy right of such land, is the property of Government.‡

Right to reshoots in occupied lands.

NOTE.—According to Government Resolution No. 4005, dated 19th May 1896, these conditions do not apply to varkas land in Thána and Kolába and in Peint Táluka of the Násik District.

Question under what provision of the law the offence of unauthorized cutting of trees in Government waste land and of reserved trees in occupied land should be dealt with.

364. 1. The following memorandum from the Commissioner, Central Division, No. R.-726, dated 28th February 1903, was approved by Government and circulated for information.

* Government Resolutions No. 895, dated 2nd February 1895; and No. 2113, dated 24th March 1898.

† Government Resolution No. 7097, dated 28th September 1889.

‡ Government Resolution No. 4321, dated 30th June 1888.

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C. GOVERNMENT RESOLUTIONS REGARDING TREES IN OCCUPIED AND WASTE NUMBERS AND IN GOVERNMENT COMPOUNDS—continued.

2. The view adopted by the District Magistrate in appeal, that the cutting of a reserved tree in occupied land is an offence under Rule 2 [read section 367, Standing Orders, Forests] made under section 75 (c) of the Forest Act, seems clearly correct. But neither the rule nor the section in question can be held to be applicable to Government waste lands. They refer in express terms to lands belonging to, or in occupation of private persons; and they cannot be supposed to refer even by implication to unoccupied land because no law or rule having the force of law is necessary in respect of trees standing on such lands. The cutting or removal of such trees is a matter which can be dealt with under section 43 of the Land Revenue Code [read section 364, Standing Orders, Forests] under Rule iii (b) of the rules under the Code (Rule iii (b) pertains to penalties under section 215 of the Code) or under section 379 of the Indian Penal Code; and so far as the Commissioner remembers the general practice in old days was to proceed under the Penal Code. The High Court ruling of 1896, so far as it sets aside the conviction under the Forest Act, of a person who had cut a reserved tree in Government waste land, can scarcely be called in question; and there seems no necessity for any amendment of section 75 (c), as proposed by the Conservator of Forests.

3. The effect of the High Court ruling seems to have been very much exaggerated. The essence of the Court's judgment appears to be contained in the words "the District Magistrate is right," the District Magistrate having pointed out that Rule 2 under section 75 of the Forest Act, does not cover the case of teak growing in waste numbers. In proceeding to specify as a reason for the illegality of the prosecution and conviction for an offence under the Indian Forest Act, that "the teak tree did not stand in a forest," the Court seems to have curiously ignored the very rule to which the District Magistrate had referred it under which such action *might* be legal in connection with a tree not standing in a forest.

4. Personally the Commissioner would not, if a Magistrate, feel in any way debarred by this ruling from convicting under section 76 of the Forest Act, for any breach of the provisions of Rule 2; and, so far as the present case has been reported, he thinks that there need have been no hesitation. If Government have this view, he would suggest its being made generally known, as there appears to be a good deal of misapprehension on the point, otherwise, it seems desirable that an early opportunity should be taken to bring the question again before the High Court and of having it properly argued.*

365. (1) In questions of compound produce, there are two classes which have to be considered, *viz.*, the produce of Government buildings used for public purposes, and that of Government buildings used as residences, and the produce again may be divided into produce of fruit trees and grass, or produce from sale of timber. The following rules deal with the whole of the above.

Produce in compounds of bungalows belonging to Government.

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C. GOVERNMENT RESOLUTIONS REGARDING TREES IN OCCUPIED AND WASTE NUMBERS AND IN GOVERNMENT COMPOUNDS—concluded.

(2) The proceeds of the sale of all trees, fruit and grass, etc., in the compounds of Government buildings used as offices, hospitals, etc., should be credited to Public Works, Provincial Revenue, the disposal of the timber being in the hands of the Executive Engineer, and that of the other products in those of the head of the establishment occupying the premises.

(3) The proceeds of the sale of all trees in Government buildings occupied as residences will be paid into the Executive Engineer, without whose sanction no trees should be cut down, to be credited to Public Works, Provincial Revenue. The produce of all fruit trees, grass, etc., will be the property of the tenant for a time being, and the value of the same should be taken into consideration when fixing the rents of such buildings.

(4) The above does not refer to Military Cantonments.*

XVI. SECTIONS 75 (d) AND 84, CONTRACTS.

366. In exercise of the powers conferred by section 75, clause (d), of the Indian Forest Act, 1878 (VII of 1878), as amended by the Indian Forest Act, 1890 (V of 1890); and in supersession of Government Notification in the Revenue Department, No. 2799, dated 31st March 1896, the Governor in Council is pleased to make the following rule, with reference to section 84 of the said Act amended as aforesaid, namely:—

Rules under the Indian Forest Act binding contractors to bids made by them in auction.

Whoever enters into any contract with any Forest Officer acting on behalf of Government, shall, if so required by such Forest Officer, bind himself by a written instrument to perform such contract.

Explanation.—A person, who makes a written tender for a contract, or who signs the conditions of an auction-sale at which he is a bidder, such tender or conditions of sale being on or in a form furnished by a Forest Officer for that purpose whereby he—

(a) binds himself to perform the contract for which he tenders or bids in the event of his tender or bid being accepted or

(b) binds himself not to withdraw his tender or bid during the time that may lapse before its acceptance or refusal is communicated to him, shall be deemed to have been required by such Forest Officer to bind himself as aforesaid, and

in case (a) on the acceptance of his tender or bid or,

in case (b) on the making of his tender or bid,

to have bound himself accordingly, within the meaning of this rule; and any such person need not enter into a separate written instrument

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for the purpose, unless specially so required by the Forest Officer with whom he contracts.*

367. In exercise of the powers conferred by the thirty-third and thirty-fourth of Victoria, chapter fifty-nine, section two, and of all other powers enabling him in this behalf, the Governor General in Council is pleased, in supersession of existing orders, to declare that the undermentioned classes of deeds, contracts, and other instruments referred to in the twenty-second and twenty-third of Victoria, chapter forty-one, section two, may be extended as follows:—

Contracts and other instruments in matters connected with the administration and working of forests and with business of the Forest Department generally.

Powers of Forest Officers to execute contracts for Government.

By Conservators, Collectors of Districts, Deputy, Assistant, Extra-Deputy and Extra-Assistant Conservators of Forests to such extent and within such limits as the Local Government may prescribe by notification in the official Gazette.

368. Under Government Notification No. 608, dated the 3rd February 1879, Revenue Department, published at page 94 of Part I of the *Bombay Government Gazette* for 1879, and Government Notification No. 1280, dated the 21st February 1898, published at page 123 of Part I of the *Bombay Government Gazette* for 1898, it is prescribed that "contracts and other instruments in matters connected with the administration of forests and with the business of the Forest Department in the Bombay Presidency generally" may be executed within the limits of their respective charges, by

- (1) Conservators or Deputy Conservators in charge of Circles, } whatever be the amount or value of the subject-matter of the contract or other instrument ;
- (2) all Divisional Forest Officers, whether Deputy Conservators, Extra-Deputy Conservators, Assistant Conservators, or Extra-Assistant Conservators, } if such amount or value do not exceed Rs. 5,000 :

Provided always that no Forest Officer of any grade below that of Conservator or Deputy Conservators in charge of a Circle shall execute any contract or other instrument without, or otherwise than in accordance with, the previous sanction of the Conservator or Deputy Conservators in charge of a Circle to whom he is subordinate, given either expressly or generally in connection with the sanctioned working plan of a season, and that every contract or other

Page 241, Section 372.

Substitute the following for the clause added under Government Resolution No. 3100, dated 2nd April 1913:—

(i) Power to enter into agreements with contractors without the countersignature of the Conservator upon such agree-

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ments being required has been delegated to Deputy and Extra Deputy Conservators of not less than 10 years' standing. ¶

(ii) Extension of time to contractors for completion of their contracts entered into with Divisional Forest Officers can be granted or refused only by Conservators. ¶

Add the following to the foot-note:—

¶ Government Resolution, R. D., No. 3100, dated 2nd April 1913.

¶ Government Resolution, R. D., No. 730, dated 23rd January 1914.

Section 372, page 241.

Add the following clause to this section :—

“The power of Conservators to countersign forest agreements with Contractors has been delegated to Deputy or Extra Assistant Conservators of Forests of 10 years’ service.” (Government Resolution No. 3100, dated 2nd April 1913, Revenue Department).

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instrument executed by any such officer shall be drawn in a form which has been approved by the said Conservator or Deputy Conservators in charge of a Circle.*

369. Draft forms (Central Press, Forms Nos. 279 to 285) of agreements, schedules of special clauses and memorandum of instructions for the Presidency proper have been sanctioned by Government, to be used when carrying out contracts or other instruments in matters connected with the administration and working of forests and with business of the Forest Department generally.

370. The Governor in Council considers it sufficient to direct that the form of agreement should be kept in the offices of the Divisional Forest Officers and Rangers for inspection by intended contractors, that it should be mentioned in advertisements, proclamations, or bills inviting bids or tenders for contracts, and that it should also be made specially available for inspection at any public auctions or sales of such contracts.

371. With a view to secure the prevention of avoidable delays in the execution of agreements in pursuance of accepted forest contracts, the Governor in Council is pleased to declare that in the published or proclaimed conditions of sale or invitation of tenders, a provision should invariably be included to the effect that the necessary contracts should be concluded and signed by the contractors within a fixed period, in no case exceeding one month.

372. Although not bound by rule or published conditions of sale to do so, yet the Conservator or Deputy Conservator of Forests in charge of the Circle or the Divisional Forest Officer concerned should be careful to sign the contracts at the same time as, or as soon as possible after, the contractors sign as contemplated in the agreement.†

373. A special agreement form for contractors to carry out the construction of forest roads and buildings has been sanctioned by Government.‡

374. A special agreement form for leasing out forest lands has been sanctioned by Government.§

375. In exercise of the power conferred by section 8 of the Indian Stamp Act (I of 1879), the Governor General in Council is pleased to remit the duty payable under that Act on instruments in the nature of memorandum or agreement furnished to, or

* Government Resolution No. 1280, dated 21st February 1898.

† Government Resolution No. 7220, dated 17th November 1900.

‡ Government Resolution No. 8669, dated 9th December 1902.

§ Government Resolution No. 247, dated 12th January 1904.

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made or entered into, with the Forest Department⁷ by contractors for the due performance of their contracts.*

376. The following form for giving or taking over charge of contract areas should, after having been duly filled in and signed, be attached to the agreement form :—

Form for giving and taking over charge of contract areas.

Form for giving and taking over charge of Coupes or other Forest areas.

Name of petitioner—

I hereby give notice that I have bought Coupe
completed the work in
Block , Range , of the Division, and wish to take
charge of the same. give over

Signature.

<u>Date of</u> <u>receiving</u> over charge. <u>delivering</u>	Range, Block, Coupe.	Damage if any.	Value of damage.	Remarks.

I hereby certify that I have this day taken over charge of the abovementioned area.

I hereby certify that I have handed over charge of the abovementioned area.

Signature of Receiver.

Signature of Giver.

NOTE.—Two such forms should be attached to every agreement, one certifying the handing over of the area to the contractor, and the second certifying that he has handed the area back to the Forest Officer at the time of the completion of his contract.

**XVII. SECTION 78, DUTIES OF REVENUE AND POLICE OFFICERS
WITH REGARD TO FORESTS.**

377. It shall be the duty of all Revenue Officers to give every possible assistance to the Divisional Forest Officer, by giving information of all cases of forest fires, or of offences committed in forests, and of any neglect of duty by Forest subordinates which may come to their notice, and to

Duties of Revenue Officers with regard to forest protection.

For present Section 382.

Substitute New Section 382 as follows :—

382. Subject to the orders of Government—

(a) the Commissioner in Sind shall have the direction, regulation and general control of all matters other than financial connected with forest administration in that province ;

(b) the Commissioners of the Northern, Central and Southern Divisions shall be responsible for the entire executive administration of forest affairs within their respective divisions, and shall for the purposes of such administration—

(a) issue orders and instructions to Collectors, Conservators, Deputy Conservators in independent charge of Circles ;

(b) interpret the orders of Government whenever doubts may arise in applying such orders ;

(c) settle all matters in which any difference of opinion arises between the Forest Department and any other department ;

(d) promote generally the harmonious working of the Revenue and Forest Departments ; and

(e) except in matters relating to departmental finance and to appointment, leave or transfer of establishment, in which the orders of Government are required, receive, consider and with their own views in each case, when such reference is necessary, refer to Government all reports respecting forest matters submitted to them whether from the Revenue or from the Forest Department.*

* Notification No. 7107, Revenue, dated 6th September 1892, *Bombay Government Gazette*, 1892, Part I, page 909.

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or "Powers of Commissioner in Sind."

substitute "Powers of the Commissioner in Sind; and of the Commissioners,
in, Central and Southern Divisions."

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impress on their subordinates a sense of their obligations to protect the Government forests against theft or injury.

378. It shall be the duty of the Collector and his Assistants to inspect Rangers' offices. time to inspect the offices and accounts of all Rangers within their charge, taking care that the Range Officers are not withdrawn from important out-door duties to attend inspections.

379. When a Forest Guard reports himself to a Revenue or Police Officer, the officer on whom report is made should, time permitting, inspect the Forest Guard's diary, and put such questions to him as may seem expedient with a view to ascertaining whether he is attentive to his duties. The village officers could also be questioned on the point; a Revenue or Police Officer examining a Forest Guard's diary shall write the word "seen" below the last entry, attaching his signature and the date of inspection.

380. When a Mahalkari or Chief Constable, or any Revenue or Police Officer of higher rank camps in the limits of a forest village, time and opportunity permitting, the officers named should visit any forest block, plantation or special work in charge of the Forest Guard, who should, if possible, attend such officer on his visit.

No Revenue or Police Officer shall call a Forest Guard off his beat. Nor shall a Forest Guard leave his beat in order to report himself to such officer.

381. Sections 379 and 380 do not apply to Collectors or Commissioners, who will exercise their own discretion in the matters therein dealt with.

382. Subject to the orders of Government—

(a) the Commissioner in Sind shall have the direction, regulation and general control of all matters other than financial connected with the forest administration in that province;

(b) interpret the orders of Government whenever doubts may arise in applying such orders;

(c) settle all matters in which any difference of opinion arises between the Forest Department and any other department;

(d) promote generally the harmonious working of the Revenue and Forest Departments; and

(e) except in matters relating to departmental finance and to appointments, leave or transfers of establishment, in which the orders of Government are required, receive, consider and with their own views in each case, when such reference is necessary, refer to Government all reports respecting forest

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matters submitted to them whether from the Revenue or from the Forest Department.*

383. In the opinion of His Excellency the Governor in Council it is very necessary that village officers should be made to understand that they are indirectly responsible for the preservation of forests, as being the property of Government. The fact that there is a Forest Establishment, whose prime duty is solely to look after forests, does not relieve the village officers from their share of responsibility in the matter. His Excellency the Governor in Council is therefore pleased to direct that the village officers in Forest villages should submit a half-yearly report on the state and condition of the trees belonging to Government in forests and *málki* numbers in their respective charges to the Assistant Collector in charge of the *táluka*, who should forward it to the Divisional Forest Officer.†

384. Government consider that exemplary punishment should be inflicted on village officers whenever damage has resulted to Government forests through culpable negligence on the part of those officers.‡

XVIII. SECTION 79, IZAFATDARS' FORESTS IN THE THANA DISTRICT.

385. For rules regulating the management of Izafatdars' forests in the Thana Collectorate, read Government Resolution No. 6770, dated 2nd December 1875, and Government Resolution No. 9822, dated 28th September 1908.

L. R. No. 426, dated 1st May 1876 (*vide* Government Resolution No. 2867, dated 12th idem) states "as the management of the forests has been resigned unreservedly in their hands, the Forest Department will not be justified in interfering in any way with a view of securing either a more economical or a more profitable management" and continues to lay down precautions concerning the recovery of the Government share of the profits.

* Government Resolution No. 7107, dated 6th September 1892.

† Government Resolution No. 5062, dated 19th July 1899.

‡ Government Resolution No. 650, dated 26th January 1891.

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Add the following :—

“ *Note.*—The order contained in the last sentence of the foregoing paragraph has been cancelled by Government Resolution No. 3025, dated 5th May 1902, R. D.”

IV.

In the Foot note on page 244.

For "Government Resolution No. 5062, dated 19th July 1899"
"Government Resolution No. 5062, dated 19th July 1890, R. D."